



VOLUNTARY ADMINISTRATION

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VOLUNTARY ADMINISTRATION

The primary purpose of a Voluntary Administration is to provide a Company with a chance to trade out of its difficulties at a time when the Company is unable to pay its debts as and when they fall due.

That is, Directors believe it is either currently insolvent or will become so in the future as a result of not being able to meet its financial commitments.

A Voluntary Administration provides a Company with the procedure to attempt a compromise or arrangement with its Creditors through a Deed of Company Arrangement (DOCA), which may save the Company and related jobs while maximising the return to Creditors.

It is important to understand a Voluntary Administration and its desired outcome (i.e. an approved DOCA) will ultimately only succeed if the majority of Creditors believe it is in their best interests to allow the Company to enter into the DOCA, and therefore vote in favour of it (more on this later).

Instrumental in this, is Creditors believing the Administrator has considerable experience and a reputation of impartially delivering optimum outcomes.

The key stakeholders

Key stakeholders in a Voluntary Administration are the:

- Voluntary Administrator;
- Company Directors;
- Creditors (secured and unsecured); and
- Employees.

Each has a role to play and must understand their responsibilities, the timing of required actions and the ramifications of non-delivery.

We acknowledge that, at the time of an Administrator's appointment, the financial storm Directors find themselves in can create enormous stress. Whilst we would like to eliminate the stress from day one, we know this is not achievable.

The appointment is simply the first step in the right direction and Directors' involvement through out the process is crucial to the best outcome.

What are the critical success factors?

Timely access to complete and accurate Company information.

The importance of access to timely, complete and accurate information cannot be over-emphasised. As you will see, the key tasks required in an Administration have time frames set by the Corporations Act. As a result, the information required by an Administrator for the preparation of reports must be provided in a timely fashion.

The absence of information from a report can reduce the chances of a successful Deed of Company Arrangement and, equally, be construed by Creditors as evidence of potential wrongdoing. It is in the best interests of Directors to ensure this does not happen.

Co-operation from Directors, their Advisors and Employees

Co-operation from Directors, their Advisors and Employees aids the process dramatically. It can be the difference between a successful and unsuccessful Administration.

Co-operation includes the previously mentioned provision of timely financial information and also the co-operation of employees in making any necessary operational changes.

It is important for all employees to understand the Administrator is working to produce the best outcome for all stakeholders, inclusive of them.

Accurate Proofs of Debt submitted by Creditors

Accurate Proofs of Debt submitted by Creditors significantly speeds up and potentially increases the return to Creditors.

Key deliverables in a Voluntary Administration

A Voluntary Administration is a procedure a Company and its Directors move through.

The Corporations Act clearly defines the

stakeholders, the events, the deliverables, their respective timings and potential outcomes.

To ensure that Directors and their Advisors clearly understand each of these, this document will move through them in chronological order. They are:

- The appointment of the Administrator;
- The first Creditors' Meeting;
- The development of a Deed of Company Arrangement (not always achievable);
- The second Creditors' Meeting; and
- Creditor's approval of a DOCA (only achievable where a DOCA has been developed).

Appointment of Administrators

Voluntary Administrators are normally appointed by the Directors where they believe the Company is insolvent.

However, it is important to note Directors need only be satisfied the Company is likely to become insolvent at some future time for appointment to be possible. This ensures Directors can avoid potential liability for insolvent trading as set out in the Corporations Act.

Early intervention is obviously the optimum alternative.

The following will need to occur prior to or upon the day of appointment:

- Signing Appointment documentation; and
- Provision of information as per our checklists

What happens upon Appointment?

Administrator takes control of the Company

On appointment as Voluntary Administrator, the Administrator takes control of the Company and the Directors' powers are suspended. The Administrator is therefore responsible for the Company's affairs in the same way the Directors were, prior to the Administrators appointment.

Director's guarantees become unenforceable

During the Administration, a personal guarantee of a debt, usually given by a Director, is unenforceable except with the Court's leave. However, it is important to note that at the end of the Administration, personal guarantees are enforceable unless under an executed DOCA release from the guarantees has been negotiated with the respective Creditors.

Notice of appointment

The Administrator is obligated to notify all substantial charge holders of their appointment prior to close of business on the day after the appointment. Whilst this information can be determined by the Australian Securities and Investment Commission (ASIC) records, provision of this information by Directors is extremely helpful.

To ensure Creditors receive sufficient notice of the first Creditors' Meeting, the first Creditors' Report must be posted to all known Creditors of the Company the first business day after appointment. In addition, notice of the appointment must be published in a newspaper within three business days of the appointment.

This is the beginning of the process of informing all relevant stakeholders that the Company's affairs are now in the hands of the Administrator and all related communication is to be directed to them. This provides Directors with instant breathing space.

Administrator becomes personally liable

Upon appointment, the Administrator becomes personally liable for debts the Company incurs whilst in Administration.

However, to ensure an Administrator is willing to be appointed, the Administrator is entitled to be paid from funds realised from Company assets. To ensure that this power is not abused, Creditors must approve all fees via a vote.

The Administrator will therefore need to be satisfied the Company has sufficient unsecured assets out

of which to cover potential debts and/or has an agreement with the Directors or Principal Creditors to the effect that the Administrator's fees/liabilities will be met.

Breathing space (Moratorium on enforcement of rights)

To ensure a Company can continue to trade where Administrators believe it is in the best interest of stakeholders to do so, laws have been passed to ensure Creditors, Suppliers of essential services and Lessors of property are provided with breathing space.

Whilst specifics relating to Creditors, Suppliers of essential services and Lessors of property are different, they all provide the breathing space required to enable the Administrator to ascertain if there is any advantage to stakeholders in allowing the Company to trade on.

First Creditors Meeting

The Corporations Act requires two Creditors' meetings to be held. These are an essential part of the mechanism by which Creditors are kept fully informed and able to vote on resolutions placed before them.

The first meeting must be held within eight business days of appointment. This is a short time period and hence access to timely information is essential for an Administrator to properly prepare.

The purpose of the meeting is to allow the Administrator to update Creditors to the best of his/her ability, and provide the opportunity for two resolutions to be voted on.

- The first is the appointment of a Creditors representative body (i.e. a Committee of Creditors) to assist the Administrator in the performance of his or her duties; and
- The second is the replacement of the Administrator if the Creditors have concerns regarding the ability of the Administrator to discharge his/her duties.

Second Creditors' Meeting

The second meeting of Creditors is to be held within 35 days of Appointment unless extended by an application to the Court where the Administrator requires more time to prepare their report.

The Administrator must be in a position to properly advise Creditors regarding the financial affairs of the Company and its prospects. Accordingly, prior to the second meeting of Creditors, in accordance with the Corporations Act, the Administrator must investigate the affairs of the Company and report the results of his/her investigations to the Creditors and, if offences are identified, to ASIC.

The areas of investigation are clearly set by the Corporations Act, and an Administrator must be thorough in the performance of their duties and report on any evidence of:

- **Insolvent Trading.** If proven, Directors can be personally pursued for financial compensation to Creditors for debts incurred during the time of the insolvent trading.
- **Preferential payments.** Payments made to Creditors at a time when the Company was insolvent will be reviewed. As a consequence, the Company may have provided a Creditor with a preference over other Creditors of the company. That payment may be "clawed back" from the Creditor by the Liquidator.
- **Uncommercial transactions.** Transactions that a reasonable person would not have entered into because the transaction was either detrimental to the Company or provided the other party with a benefit that would not normally be realised.
- **Related party transactions.** Transactions that are to the detriment of the Company and entered into by persons or entities related to the Officers or Shareholders of the Company.

Where one is proposed, the Administrator must form an opinion on whether it is in the best interests of the Company's Creditors to execute a Deed of Company Arrangement (DOCA). This view is formed by the Administrator examining the outcome of the

proposed DOCA when compared to the alternative outcome of Liquidation.

Deed of Company Arrangement

As mentioned, prior to the Second Creditors' Meeting, the Administrator will also liaise with the Directors to formulate (where possible) a proposal, for the Company to enter into a DOCA.

The purpose of the proposal is to submit a plan to save the Company and maximise the return to Creditors, thereby preventing the winding-up of the Company.

Where a proposal has been formulated, the Administrator will submit this proposal, at the second meeting, detailing his/her investigations and recommendation on whether he/she thinks the Creditors should accept or reject the proposal. Creditors will then be asked to decide whether to accept the proposal.

The options available to Creditors at the second meeting are:

- A. Accept a DOCA proposal (if one is developed) resulting in the Company moving into a DOCA;
- B. Reject the proposal and resolve the Company be wound up; or
- C. End the Administration and return control of the Company to the Directors.

Creditors accept the DOCA proposal, what next?

It is normal practice for the Administrator to remain the same, unless Creditors resolve otherwise. This allows for a smooth transition with the Administrator commencing execution of the DOCA as soon as possible. The DOCA must be signed within 21 days of the date that the Creditors resolve to accept the proposal.

All pre-deed, unsecured Creditors are bound by the deed irrespective of whether they voted in favour of the DOCA as the majority rules and all are bound by the vote.

The transition into a DOCA also means the Administrator is no longer personally liable for debts incurred by the Company during the operation of the DOCA.

The position of secured Creditors and Owners or Lessors of property under DOCA

The moratorium on the enforcement of rights is also lifted once the DOCA is executed. However, to ensure that the company has the ability to trade on, the Court has a power, on the application of the DOCA Administrator, to restrain a secured Creditor from realising its security or otherwise dealing with the security, or to restrain an Owner or Lessor from repossessing property.

In some instances the moratorium may remain in place. This can occur where a charge holder votes for a DOCA that has terms that restrict the charge holder from taking action to enforce the charge.

Why would a secured or unsecured Creditor support an Administration?

A secured or unsecured Creditor will support an Administration when, quite simply they believe it is in their best financial interest to do so.

This may be the case for several reasons.

An Administrator has the benefit of the statutory moratorium and is able to carry on the Company's business in an orderly manner whilst formulating a proposal for a DOCA. In many cases, this can maintain asset values and produce a better result for unsecured Creditors.

If the Company is placed in Voluntary Administration, the Administrator will report the existence of voidable transactions that may have taken place between a Creditor and the Company. However, if the Company was placed in Liquidation the Liquidator has the power to challenge these voidable transactions and therefore it may be in a Creditor's best interest to keep the Company out of Liquidation.

Timeline for records of the Company to be made available

As mentioned, the Voluntary Administration process is defined by the Corporations Act.

In order for an Administrator to meet their obligations, they are required to accomplish certain tasks by certain dates. The following tables outline what information is required from the Company Directors over the first week to ensure the Administrator's obligations are met. These tables are best used in conjunction with the available "Checklist for Books and Records" that lists in detail all items required.

PRIOR TO OR UPON APPOINTMENT DATE (I.E. DAY 1)		
Type of Record	Item code In Checklist	Purpose
Bank Account Info Account numbers and contact details of the bank branch where accounts are held	1.1, 1.2 & 1.3	As required under the Corporations Act, only the Administrator is able to deal with the Company's property. In this regard, the Administrator will freeze the Company's bank account(s) to ensure that no debits are processed from the account.
Eftpos Eftpos facility details and direct debit details	1.8 & 1.9	If the business continues to trade, Eftpos facilities will need to be redirected and the Administrators will need to stop direct debits.
Assets Copies of lease/hire purchase agreements	14.1 & 14.2	To contact Lessors and obtain details. The Administrator has only 7 days to disclaim lease agreements, if necessary.

List of assets, Land & building	10.1, 10.3, 10.4, 11.1, 11.2, 13.2, 17.1 & 17.4	To secure the assets of the Company and arrange for insurance cover.
Secured Creditors (Details of securities and guarantee(s))	5.1	The Corporations Act requires the Administrator to advise the secured Creditor(s) of the Administration by the end of the next business day.
Other Creditor Details (including employees)	2.1 & 2.2	To establish a mailing list for the First Report to Creditors which must be posted by close of business the day after the appointment date. A list of Creditors, including names and amounts outstanding must be included in the First Report to Creditors.
WIP (Work in Progress)	16.1	The Administrator will assess the viability of continuing to trade the business.

WITHIN 2 DAYS OF APPOINTMENT DATE

Financial Statements	3.1 to 3.5	The Administrator will assess past performance of the business in assessing the viability of continuing to trade the business.
Retention of title Details of any retention title on stock	17.3, 17.4 & 17.5	Suppliers of stock with retention of title claims will need to provide details of their claims. Stock may be returned to suppliers depending on the review of the retention clauses and the stock being available to meet the claims.

WITHIN 7 DAYS OF APPOINTMENT DATE

All other books and records	As per checklist	The Administrator must investigate the financial position of the Company and prepare a detailed report for Creditors that must be posted within 19 days of appointment date. The Administrator will normally require between 7 and 10 days to fully investigate the financial affairs of the Company and to discuss the options available to Directors in terms of a Deed of Company Arrangement.
Report as to Affairs (As required by Corporations Act)		The Director(s) must complete and provide to the Administrator a Report as to Affairs, detailing the Directors' knowledge of the financial position of the Company as at the time of appointment of the Administrator.

***Disclaimer:** The information presented in this brochure is a broad outline of the Voluntary Administration provisions of the Corporations Act. As is the case with all such matters any interested parties should rely upon the formal advice of their Solicitor.*



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