

SR GROUP FINANCIAL DIFFICULTY GUIDE



ABOUT THE SR GROUP

We assist you. We guide you. Rebuild your future.

Our mission at the SR Group is to help people confronted with financial distress and victims of financial impropriety.

Our professional team of experts have been committed and focused to solving personal and business financial issues since 2012.

What we can do to assist both individuals and small to medium enterprises who are experiencing financial difficulty?

We understand the divide that often exists between debtors (you) and creditors can be overwhelming. We are a bridge builder who brings the two parties closer together to ensure a mutually acceptable resolve can be achieved.

By using lateral thinking and adopting unique strategies that actually achieve results – we simplify the complexities of financial and debt burden.

We believe mediation and negotiation are important tools which assist with solving any problem. In our dealings with banks, financiers, lawyers, accountants and insolvency practitioners we use these tools to create workable arrangements for our clients.

We understand the language of your creditors – especially the Banks and their lawyers. We know how to get to the end of the process efficiently. Our strategies and skill sets are unique and cost effective.

We will always treat you with respect, while your integrity and privacy is paramount.



ABOUT INSOLVENCY

**An insolvent company is one that is
unable to pay its debts when they
fall due.**

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The 3 most common types of insolvency are:

Voluntary administration

Voluntary administration is designed to resolve the company's future direction quickly. An independent and suitably qualified person (the voluntary administrator) takes full control of the company to try to work out a way to save either the company or the company's 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.

Putting a company into voluntary administration is a simple and quick process. It can be done by the board of the company resolving that the company is insolvent, or likely to become insolvent, and an administrator should be appointed. The directors also need to obtain the written consent of a registered liquidator to act as voluntary administrator.

What is a deed of company arrangement (DOCA)?

This is a binding arrangement between a company and its creditors controlling how the company's affairs will be dealt with, which may be agreed to as a result of the company entering voluntary administration. This aims to maximise the chances of the company continuing, or to provide a better return for creditors than an immediate winding up of the company.

Liquidation (winding up)

The purpose of liquidation of an insolvent company is to have an independent and suitably qualified person (the liquidator) take control of the company so that its affairs can be wound up in an orderly and fair way for the benefit of its creditors.

An insolvency practitioner will be able to advise you of the steps required to appoint a liquidator. Generally, a director-initiated liquidation involves calling a meeting of members to vote on winding up the company and the appointment of a liquidator or applying to Court to wind up the company.

This involves selling the company's assets and distributing the proceeds among creditors and then assign any surplus to shareholders.

There are **3 types** of liquidation:

Court liquidation is a result of a court order, made after an application to the court, commonly by a creditor of the company;

Creditors' voluntary liquidation is initiated by the company;

Members' voluntary liquidation allows a company's affairs to be finalised and assets to be distributed to all stakeholders.

Receivership

A company most commonly goes into receivership when a receiver is appointed by a secured creditor who holds security over some or all of the company's assets. The receiver's primary role is to collect and sell sufficient of the company's charged assets to repay the debt owed to the secured creditor.

The receiver's role is to collect and sell enough of the company's charged assets and repay the debt owed to the secured creditor.

A director who is also a secured creditor should seek advice and SR Group can be of assistance before appointing a receiver.

WHAT IS THE DIFFERENCE BETWEEN INSOLVENCY AND BANKRUPTCY?

Bankruptcy is an insolvency procedure that applies to a person, not a company. A person is bankrupt if they have been declared bankrupt under the terms of the Bankruptcy Act and have not been discharged from bankruptcy.



FREQUENTLY ASKED QUESTIONS

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What are the warning signs my company maybe in financial difficulty?

- ongoing losses
- poor cash flow
- lack of cash-flow forecasts and other budgets
- increasing debt
(liabilities greater than assets)
- unrecoverable loans to associated parties
- creditors unpaid outside usual terms
- solicitors' letters, demands, summonses, judgements or warrants issued against your company
- suppliers placing your company on cash-on-delivery (COD) terms
- overdraft limit reached or defaults on loan or interest payments
- problems obtaining finance
- change of bank, lender or increased monitoring/involvement by financier
- inability to raise funds from shareholders
- overdue taxes and superannuation liabilities
- board disputes and director resignations, or loss of management personnel.

If my company is in financial difficulty what should I do?

The most important first step is to get proper accounting and legal advice as early as possible, as this increases the likelihood of the company surviving. One of the most common reasons for the inability to save a company in financial distress is professional advice was sought far too late. It is important not to have a 'head in the sand' attitude, hoping that things will improve as they rarely do.

SR Group can review your company and outline available options. You need to be aware of your options so that you can make informed decisions about your company's future. Options may include refinancing, restructuring or changing your company's activities.

My company is insolvent. How should I approach this?

If your company is insolvent, do not allow it to incur further debt. Unless it is possible to promptly restructure, refinance or obtain equity funding to recapitalise the company, your options are to appoint a voluntary administrator or a liquidator. The three most common insolvency procedures are voluntary administration, liquidation and receivership.

Do I have duties as a director?

If your company is insolvent, or there is a real risk of insolvency, your duties as a director are expanded to include the interests of creditors (including employees and other stakeholders). You also have a duty to prevent your company trading if it is insolvent as well as general directors' required duties.

These required duties entail compliance with general and specific laws applying to your company's operations and your primary duty is to the shareholders.

General duties imposed by the Corporations Act on directors and officers of companies include:

- exercising your powers and duties with the care and diligence that a reasonable person would have which includes taking steps to ensure you are properly informed about the financial position of the company and ensuring the company doesn't trade if it is insolvent;
- exercise your powers and duties in good faith in the best interests of the company;
- not to improperly use information obtained through your position to gain an advantage for yourself or someone else, or to cause detriment to the company.

Duty to not trade while insolvent

This means that before you incur a new debt, you must consider whether you have reasonable grounds to suspect that the company is insolvent or will become insolvent as a result of incurring the debt. An understanding of the financial position of your company only at the time you sign off on the yearly financial statements is insufficient. You need to be constantly aware of your company's financial position.

Duty to keep books and records

Your company must keep adequate financial records to correctly record and explain transactions and the company's financial position and performance. A failure of a director to take all reasonable steps to ensure a company fulfils this requirement contravenes the Corporations Act.

Duty expands to include creditors and employees with outstanding entitlements

It is important to note if your company is insolvent. You are responsible for making sure the company meets its PAYG withholding and SGC obligations.

If your company fails to meet a PAYG withholding or SGC liability in full by the due date you will become **personally liable**

for director penalties equal to the unpaid amounts. **SR Group** can negotiate and assist in this matter.

What are the consequences as a Director if my company is insolvent and trading?

Insolvent trading can have serious consequences for directors. The penalties can include the following:

Civil penalties

By hindering the insolvent trading provisions of the Corporations Act, this can result in civil penalties against directors, including pecuniary penalties of up to \$200,000.

Compensation proceedings

This is for amounts lost by creditors and can be initiated by ASIC, a liquidator or a creditor against a director personally. This can be made in addition to civil penalties.

Compensation payments are potentially unlimited and can lead to the personal bankruptcy of directors. The personal bankruptcy of a director disqualifies this person from continuing as a director or managing a company.

Criminal charges

If dishonesty is found to be a factor in insolvent trading, a director may also be subject to criminal charges (which can lead to a fine of up to \$220,000 or imprisonment for up to 5 years, or both).

Being found guilty of the criminal offence of insolvent trading will also lead to a director's disqualification.

The Corporations Act provides some statutory defences for directors. However, directors may find it difficult to rely upon these if they have not taken steps to keep themselves informed about the company's financial position.

How does external administration affect me as a director?

When a company goes into external administration there are other consequences for directors to be prepared for.

These vary depending on the type of external administration and can incorporate the following:

Directors' powers Directors of companies in voluntary administration or liquidation lose control of the company.

If a company goes from voluntary administration into a deed of company arrangement, the powers of the directors 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.

In a receivership, the powers of the directors depend on the powers of the receiver, as detailed in the charge document, and the extent of the assets over which the receiver is appointed.

If the receiver is appointed over all or most of the assets of a company, the receiver effectively has control, although the directors still have certain responsibilities and duties, and may retain residual control.

Directors' obligations Directors have certain obligations to assist the external administrator. More information can be found at asic.gov.au.

Creditors' meetings These meetings are held in voluntary administrations and liquidations. Both a voluntary administrator and liquidator can also require a director to attend a creditors' meeting to provide information about the company and its business, property, affairs and financial circumstances.

Disqualification If a director has been involved with two or more companies that have gone into liquidation within the last 7 years and paid their creditors less than 50 cents in the dollar, The Australian Securities and Investments Commission (ASIC) may disqualify them from managing companies for up to five years. This effectively bans a person from acting as a director.

Do I need to assist the external administrator if I am a director?

Directors have an obligation to assist the external administrator by:

- **advising the external administrator**, the location of company property and delivering any such property in their possession to the external administrator
- **providing the company's books and records** to the external administrator (voluntary administration and liquidation) or giving access to the books and records to the external administrator (receivership)
- **advising the external administrator** of the whereabouts of other company records

- **providing a written report** about the company's business, property and financial circumstances (commonly referred to as a RATA) within either 5 business days (voluntary administration), 7 days (creditors' voluntary liquidation) or 14 days (receivership and court liquidation) of the appointment of the external administrator, and
- **meeting with, or reporting to, the external administrator** to help them with their enquiries, as reasonably required.

Where a company officer fails to comply with their responsibilities, the external administrator may refer the matter to ASIC and can be a serious breach of the Corporations Act.

A hand pointing upwards in a blurred background. The hand is the central focus, with the index finger pointing towards the top right. The background is out of focus, showing what appears to be an indoor setting with light-colored walls and possibly other people's hands in the distance, suggesting a meeting or a presentation.

ABOUT BANKRUPTCY

**Bankruptcy is a legal process where
you're declared unable to pay your debts.**

A person is bankrupt if they have been declared bankrupt under the terms of the Bankruptcy Act. It can release you from almost all of your debts, provide relief and allow you to make a fresh start.

The two types of bankruptcy are:

Voluntary bankruptcy


This is referred to as a debtor's petition. You can apply to become bankrupt voluntarily if you have a debt of any amount you cannot pay. When you are a voluntary bankrupt, a trustee appointed by the Australian Financial Security Authority (AFSA) will manage your financial affairs.

A personal insolvency agreement is an alternative to bankruptcy and is where a person enters into an agreement with their creditors without being made bankrupt.

Creditors Petition

It's also possible that someone you owe money to (a creditor) can make you bankrupt through a court process. In this situation, a private trustee will manage your financial affairs and charge very high fees for this service.

Bankruptcy also looks after creditors' interests as an independent, qualified accountant control and investigate the bankrupt's affairs. Then collects and distributes the bankrupt's assets.



FREQUENTLY ASKED QUESTIONS

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When I am bankrupt what are my obligations?

- you must provide details of your debts, income and assets to your trustee;
- your trustee notifies your creditors that you're bankrupt - this prevents most creditors from contacting you about your debt;
- your trustee can sell certain assets to help pay your debts;
- you may need to make compulsory payments.

What happens to my debts when I'm bankrupt?

Most debts are covered and this means that you no longer have to repay them. In some instances, your trustee may sell your assets or use compulsory payments to help pay your debts.

Which debts does are covered in bankruptcy?

Unsecured debts - refers to credit and store cards, overdrawn bank accounts and unpaid rent, medical, legal & accounting fees.

In some cases you may need to confirm your bankruptcy covers Centrelink debts, Australian Taxation Office debts, victims of crime debts and toll fines.

Secured debts - is tied to specific property, e.g. mortgage (house is security), car loan (car is security) and hire purchase or rent to buy (eg. furniture or electronics as security). The creditor has the right to take possession of your property if you don't make the payments. If this occurs you must assist with this recovery action.

Joint debts - is a debt you share with another person. Normally if one person enters bankruptcy, the other person on the loan documents becomes 100% liable for the debt. If you have a guarantor for a loan (e.g. your parent), normally the guarantor becomes 100% liable for the debt.

Company debts - If you are a sole trader you can list your debts in the bankruptcy. If you are a personal guarantor for company debts, you can include these in your bankruptcy.

Overseas debts - are debts you incur overseas are covered in your Australian bankruptcy. This means your creditors can't pursue for that debt in Australia. Your overseas creditors can pursue you for the debt if you travel back to that country.

Direct debits - Cancel any direct debits you have set up with your bank.

Which debts are not covered in bankruptcy?

Bankruptcy doesn't cover all obligations, including:

- court imposed penalties and fines;
- child support & maintenance;
- HECS & HELP debts; (government student loans)
- debts you incur after your bankruptcy begins;
- unliquidated debts (e.g. a debt where you and your creditor are yet to determine the amount).

This means you are still liable for these debts. You need to contact your creditors directly to discuss payment options.

What happens to my assets when in bankruptcy?

During bankruptcy, your trustee may be able to claim, and sell, some of your possessions (assets). Your trustee can use proceeds from the sale of your assets to repay money you owe to creditors.

You must declare any assets you have when you apply for, and any you receive during, bankruptcy. There are high penalties for not disclosing information to your trustee.

Assets can include, but are not limited to the below:

Your vehicle - You can keep a vehicle/s you use mainly for transport up to a set amount. Once the value of your vehicle/s exceeds this amount your trustee may claim them.

Your house and property you own - Your trustee can claim any house/s or property you own as an asset.

Money you receive during bankruptcy- This is money that doesn't form part of your ordinary income. It can include superannuation, inheritance money, gifts of money and compensation payments. Any prizes or lottery winnings you receive during bankruptcy are an asset that your trustee can claim.

Tools of trade - These are tools you use to earn a living. You can keep these tools as long as the value is below a set amount. If they are above the set amount your trustee is able to sell them to help pay your debts.

Your household belongings - You're able to keep most ordinary household items of reasonable value e.g. furniture and appliances.

Will bankruptcy affect my partner's assets?

It can affect your partner's assets if they:

Own an asset with you - A joint asset is an asset owned by more than one person. Your trustee will have an interest in your share of the asset e.g. if you have a bank account in joint names, the trustee can claim your half of the balance.

Are entering into bankruptcy - The trustee would have an interest in the full amount of any joint assets.

Are in possession of an asset owned by you - Including money, real estate, motor vehicles and other property.

Own assets that you contributed towards or helped purchase - This includes assets not registered in your name - e.g. a house.

During bankruptcy how much can I earn?

There is no limit to the amount of income that you can earn while you're bankrupt.

There is also no limit to the amount you can save during your bankruptcy. But if your after-tax income exceeds a set amount, you may have to make compulsory payments. Visit afsa.gov.au. for more comprehensive information.

What are compulsory payments (contributions)?

If your trustee determines you are earning over the income set amount, they'll ask you to pay income contributions. Your trustee can use these contributions to help repay your debts. Your trustee will notify you how and when you need to make payments.

Compulsory income payments are:

- 50% of the amount you earn above the income threshold;
- Paid by you to your trustee, and may go towards your creditors;
- Calculated by your trustee to determine the amount you need to pay.

Is my income and employment affected by bankruptcy?

Becoming bankrupt doesn't normally prevent you from working, though it will have an impact on your income and employment. One of your obligations when bankrupt is to keep your trustee informed of any changes in your income or employment as per below:

- change jobs;
- receive higher or lower income (including government assistance);
- stop working.

Who will know I'm bankrupt?

Your name will appear permanently on a public register called the National Personal Insolvency Index (NPII) and shows details of insolvency proceedings in Australia, including bankruptcy. Additional information to appear on the register would be:

- Name, date of birth, residential address and occupation that you disclose on your application;
- Any previous names and aliases, if known.
- The type of proceeding, the start date and the AFSA administration number;
- The name and contact details of the trustee or administrator of the proceeding;
- The current status of the proceeding e.g. whether you're discharged from bankruptcy.

How is my credit file affected?

Credit reporting agencies keep a record of your bankruptcy for five years from the date you became bankrupt or two years from when your bankruptcy ends, whichever is later.



INSOLVENCY GLOSSARY OF TERMS (ASIC)

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 may result in an asset if they win).

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.

IMPORTANT NOTE: The information contains a summary of basic information on the topic.

It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. 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.



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