

# VOLUNTARY ADMINISTRATION

NAVIGATING THROUGH YOUR OPTIONS.



[hlbinsolvencywa.com.au](http://hlbinsolvencywa.com.au)

TOGETHER WE MAKE IT HAPPEN



# Who are we?

We are a dedicated insolvency accounting practice with extensive corporate and personal insolvency experience. Our firm is an independent member of HLB International and the HLB Mann Judd National Association – a worldwide organisation of respected accounting firms and business advisors.

We appreciate that managing a struggling business and juggling debt is distracting and stressful. We derive satisfaction and motivation by helping people understand their options and by creating a clear plan to escape a cycle of uncertainty and worry.



Greg is a Partner at HLB Mann Judd Insolvency WA with over 13 years of corporate and personal insolvency experience. Greg is a Registered Liquidator and manages the corporate and personal insolvency appointments managed by the firm.



Kim is a Partner at HLB Mann Judd Insolvency WA. Kim is a Registered Liquidator and Trustee in Bankruptcy with over 35 years of experience specialising in insolvency and reconstruction involving all types of personal and corporate administrations.

## WHAT IS VOLUNTARY ADMINISTRATION?

Voluntary administration is a formal restructuring process designed to give a distressed company that is insolvent or likely to become insolvent some 'breathing space' from creditors and an opportunity to assess its options.

When a company enters into voluntary administration, a Registered Liquidator is appointed as the Voluntary Administrator. Upon appointment, the Voluntary Administrator takes control of the company for a period of time in order to undertake a detailed assessment of the company's financial situation and to prepare a report for creditors outlining the options for the future of the company. These options, in the main, are either to survive in some form with the support of creditors, or alternatively, to be wound up.

These undertakings by the Voluntary Administrator allow for the company to maximise the chances of it being able to continue operating into the future or should this prove unachievable, realising the highest possible return to the company's creditors.

## INDICATORS THAT YOU MAY BE A CANDIDATE FOR A VOLUNTARY ADMINISTRATION

Should a company be experiencing (or is likely to experience) insolvency issues, the presence of one or more of the following conditions may suggest that it may benefit from restructuring via the voluntary administration process:

- The company has a viable business that has been burdened by onerous obligations.
- A one-off event has caused the company to become insolvent.
- Early intervention upon acknowledgement of actual or impending insolvency.
- Realistic plans for ongoing trading which can form the basis of a Deed of Company Arrangement.
- Expectation that a party will provide funding for a Deed of Company Arrangement.
- There are sufficient assets for a Deed of Company Arrangement to be 'self-funding'.
- There is sufficient business trading upside in the company for a Deed of Company Arrangement to be 'self-funding'.

*"We are here to help you to generate the best outcome for your business." - Kim Wallman, Partner*

*"We take control, resolve the issues and implement the best outcome possible"*  
Greg Quin, Partner



# ADVANTAGES OF THE VOLUNTARY ADMINISTRATION PROCESS

## 1. Avoid trading while insolvent:

Under insolvent trading laws in section 588G of the Corporations Act 2001 (Cth), a director of a company can be made personally liable for debts incurred by the company if, at the time the debts were incurred, there were 'reasonable grounds' to suspect that the company would be unable to pay the debts as and when they fell due for payment.

## 2. Resolution of creditor issues:

The Voluntary Administrator, as an independent expert, is able to examine the company's operations and net asset position to recommend the best steps to resolve situations in favour of creditors. Furthermore, creditors are provided the opportunity to review the inner workings of the business by way of the Administrator's report, which in turn enables creditors to make an informed decision as to the future of the company (Deed of Company Arrangement, liquidation, or returning the control of the company to the directors).

## 3. Deed Of Company Arrangement (DOCA):

The DOCA is a highly flexible arrangement that is effectively a compromise of the company's debts. By implementing a DOCA, an otherwise viable company will pay all or part of its debts and then be free of all of its pre-appointment debts, thus allowing it to trade out of voluntary administration.

## 4. Protection from a Director Penalty Notice (DPN):

A common feature of distressed companies, is the existence of outstanding PAYG withholding, GST and SGC with the Australian Taxation Office (ATO). The Director Penalty Notice Regime enforced by the ATO, means directors can potentially become personally liable for the company's outstanding PAYG withholding, GST and SGC. Should a director be furnished with a 'non-lockdown' DPN, the director is given 21 days to either pay the debt or cause the company to be placed into external administration, which would extinguish the director's personal liability for the PAYG withholding, GST and/or SGC debt. Should the director fail to enact either of the above within 21 days, they will then become personally liable for the PAYG withholding, GST and/or SGC debt.

## 5. Prevent liquidation:

Even though liquidation is a possible outcome of a voluntary administration, it should be viewed as 'the last resort'. A Voluntary Administration provides a company an opportunity to avoid liquidation by allowing an independent Voluntary Administrator to assess whether it may be viable for the company to either enter into a DOCA or return control to the director/s. It must be noted however, that the final outcome is ultimately voted upon by creditors of the company following the issuance of a detailed report by the Voluntary Administrator, which includes a recommendation from the Voluntary Administrator as to what would be the best outcome for creditors.

## ADVANTAGES OF THE VOLUNTARY ADMINISTRATION PROCESS cont.

### 6. Breathing Space:

Upon the appointment of a Voluntary Administrator, amongst other protective provisions, a moratorium is enforced against most creditor claims and recovery actions. This provides the Voluntary Administrator with the greatest opportunity to facilitate the financial rehabilitation of the company.

### 7. Maximum Return to Creditors:

The voluntary administration process allows for a company and its creditors to consider the merits of a compromise arrangement so as to maximise the return to creditors.

### 8. Prompt Time-Frame:

The voluntary administration process usually occurs over a relatively short period of time, providing a company and its creditors a fixed time frame for dealing with issues. However, a voluntary administration also contains provisions which allow for the flexibility to extend time frames when required, so as to ensure the best outcome.

### 9. Preservation:

The voluntary administration process facilitates ongoing trading of the company during the process, so as to preserve its 'business value', employment arrangements, and vital relationships with both customers and suppliers.

### 10. Independence:

A voluntary administration allows for an orderly and transparent process under the direction of an independent insolvency practitioner.

### 11. Additional Power in Negotiations:

As a result of the voluntary administration process, the voluntary administrator may renegotiate or negate onerous contracts and leases, which the company may otherwise would not have been able to, thus allowing for the restructure of its business.

### 12. Protection from Personal Guarantees:

During the voluntary administration process, directors are protected from the enforcement of personal guarantees which they have provided to creditors of the company.



# KEY PLAYERS IN A VOLUNTARY ADMINISTRATION

## Voluntary Administrator

Upon appointment, a Voluntary Administrator 'steps into the shoes' of the director/s, possessing all powers which directors of a company have, including the ability to sell a company's assets and dismiss employees.

The role of the Voluntary Administrator is to achieve the best possible outcome for the company and its stakeholders, with the ultimate aim being to restructure the company so as to allow it to 'trade-out' of voluntary administration. However, it should be noted that a Voluntary Administrator is ultimately accountable to a company's creditors, not its directors (or shareholders).

Another responsibility of the Voluntary Administrator is to report to the Australian Securities & Investments Commission (ASIC) on potential offences committed by officeholders of the company.

Upon completion of a voluntary administration, the Voluntary Administrator must lodge a Form 5603 - End of Administration Return, which provides an account of all receipts and payments of the voluntary administration.

## Director/s

A director/s of a company in voluntary administration relinquishes control of the company to the Voluntary Administrator upon appointment.

In a voluntary administration, director/s also have an obligation to assist the Voluntary Administrator by:

- Advising the Voluntary Administrator of the location of company property and delivering any such property in their possession to the Voluntary Administrator;
- Providing the company's books and records to the Voluntary Administrator;
- Advising the Voluntary Administrator of the whereabouts of other company records;
- Providing a written report about the company's business, property and financial circumstances within 5 business days of the appointment of the Voluntary Administrator; and
- Meeting with, or reporting to, the Voluntary Administrator to help with their enquiries, as reasonably required.

## KEY PLAYERS IN A VOLUNTARY ADMINISTRATION cont.

### Creditors

Creditors of a company can be classified into three broad categories:

**1. Secured Creditors:** A Secured Creditor is a creditor who holds a 'Security Interest' over some or all of the company's assets. Security Interests can be a mortgage over real property, a general security agreement in favour of a third party (typically financial institutions), or a registration on the Personal Property Security Register (PPSR), which ensures that the creditor's security interest is enforceable and afforded the highest priority possible.

**2. Priority Creditors:** A Priority Creditor is in most cases an employee who is owed money for unpaid wages, superannuation, annual leave, sick leave, long service leave, retrenchment pay or other benefits. Priority Creditors are typically paid back before other Unsecured Creditors.

**3. Unsecured Creditors:** An Unsecured Creditor is a creditor who does not hold a 'Security Interest' over some or all of the company's assets. Unsecured Creditors are typically afforded the lowest priority of all creditor classes when it comes to a potential dividend to creditors should a voluntary administration either result in a DOCA or liquidation, often only receiving monies once both Secured Creditors and Priority Creditors are paid out in full.

Creditors have a large amount of input in a voluntary administration and ultimately determine the future of a company in voluntary administration by voting at the Second Meeting of Creditors to either:

- End the voluntary administration and hand control back to the director/s;
- Adjourn the meeting for up to 60 days;
- Wind the company up, by placing the company into liquidation; or
- Execute a DOCA.

*Note: Common industry practice is for directors to provide a personal guarantee when applying for credit terms with suppliers. As such, should a voluntary administration result in either a DOCA or liquidation in which creditors are not paid out in full, creditors holding a personal guarantee from the director/s, may then call on this guarantee, in turn making the director/s personally liable for any shortfall on any company debts which remain unpaid.*



# THE CREDITORS' VOLUNTARY LIQUIDATION PROCESS

1

## APPOINTMENT

A company may be placed into voluntary administration by:

- A resolution passed by the majority of directors of the company;
- A liquidator or provisional liquidator
- A secured creditor

Within five business days of the appointment of a Voluntary Administrator, the company director/s are required to provide the Voluntary Administrator with a Report on Company Activities and Property (ROCAP), which sets out, amongst other things, the assets, liabilities and likely causes of failure for the company.

2

## FIRST MEETING OF CREDITORS

Also within five business days of the appointment of a Voluntary Administrator a First Meeting of Creditors will be called. Creditors are notified of the meeting by way of an Initial Circular to Creditors, which will also contain within it a Declaration of Independence, Relevant Relationships and Indemnities (DIRRI) from the Voluntary Administrator.

At the First Meeting of Creditors, creditors of the company will determine:

- Whether to replace the Voluntary Administrator with someone else; or
- Whether a committee of creditors should be appointed to correspond with the Voluntary Administrator throughout the course of the voluntary administration.

3

## MANAGEMENT, INVESTIGATIONS & VOLUNTARY ADMINISTRATOR'S SECTION 75-225 REPORT TO CREDITORS

From the date of their appointment, the Voluntary Administrator has control over the company's assets and affairs, the right to continue the trading of its business, the right to terminate or dispose of assets of the company, and the right to perform any duty which an officer of the company may perform.

Also during this period, the Voluntary Administrator is to investigate the company's business, property, affairs and financial circumstances, with the director/s obligated to provide assistance when required.

At the conclusion of their investigations, the Voluntary Administrator is to form an opinion on whether it would be in the creditors' interests to either:

- Execute a DOCA;
- End the voluntary administration and hand control back to the director/s; or
- Wind the company up, by placing the company into liquidation.

Within 20 business days or 25 business days from the date of the Voluntary Administrator's appointment (depending on the time of year), a Second Meeting of Creditors must be convened.

...continued on page 11.



Prior to the Second Meeting of Creditors, the company's creditors will be provided with a Notice of the Second Meeting of Creditors and the Voluntary Administrator's Section 75-225 Report to Creditors (Administrator's Report), which will detail the Voluntary Administrator's investigations, as well as providing the Voluntary Administrator's opinion (and recommendation) on the various courses of action available to the creditors of the company. This information must be distributed to creditors at least five business days prior to the Second Meeting of Creditors.

## 4

### SECOND MEETING OF CREDITORS

The purpose of the Second Meeting of Creditors is for the Voluntary Administrator to present their Administrator's Report and for creditors to vote on what course of action should be taken.

The outcome of the meeting is either, the creditors vote in favour of:

- A DOCA;
- The company being returned to directors; or
- Liquidating the company.

An additional option available to creditors is to vote in favour of allowing an adjournment of the Second Meeting of Creditors for up to a further 60 days, which is typically sought when the Voluntary Administrator advises that there is a high likelihood that further DOCA proposals may be presented, which could result in a better return to creditors, than what is currently available.

### CONCLUSION

Voluntary administration can assist a company in financial distress by placing the interests of creditors at the forefront of any further decisions. By entering into voluntary administration, a company is provided the ability to take stock of its assets and liabilities, bring together creditors of the company, and engage a qualified insolvency professional.

The qualified insolvency professional, being the Voluntary Administrator, is then able to conduct appropriate investigations and analysis into the future viability of the company, thus enabling the Voluntary Administrator to present creditors with informed conclusions (and a recommendation) on each of the possible courses of action which are to be voted upon at the Second Meeting of Creditors.



### SOME USEFUL LINKS

[A guide for directors](#)

[A guide for employees](#)

[A guide for creditors](#)

[A guide for personal bankruptcy and liquidation](#)

## CONTACT US

LLevel 2, 16 Parliament Place, West Perth 6005

T: (08) 9215 7900

E: [info@hlbinsol.com.au](mailto:info@hlbinsol.com.au)



GREG QUIN

**PARTNER**

M: (+61) 402 943 091

E: [gquin@hlbinsol.com.au](mailto:gquin@hlbinsol.com.au)



KIM WALLMAN

**PARTNER**

M: (+61) 411 619 256

E: [kwallman@hlbinsol.com.au](mailto:kwallman@hlbinsol.com.au)

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