

VOLUNTARY ADMINISTRATION

The Voluntary Administration process offers companies and businesses faced with insolvency the ability to enter into an agreement with its creditors through a Deed of Company Agreement (DOCA), or for the business to be placed into liquidation quickly.

Voluntary Administration is a process which provides companies facing insolvency with the ability to:

- Enter into a formal agreement with its creditors through a Deed of Company Arrangement (DOCA); or
- Be placed into liquidation relatively quickly.

Upon appointment, the Voluntary Administrator assumes full control of the company and manages its ongoing affairs. The Voluntary Administrator assumes control of the company's business, property and financial affairs.

The Voluntary Administrator assumes sole responsibility to perform all functions and exercises any and all director powers that could be exercised if the company was not under Voluntary Administration, including continuing to trade or dispose of all or any part of a business or property. The director(s) and all other officers of the company lose all their powers in relation to the company during the Administration process.

The appointment of a Voluntary Administrator can be made by:

- Director(s) of a company after resolving that the company is, or is about to, become insolvent;
- The Liquidator of a company, if a proposed DOCA by the Director(s) of the company will provide a better return to creditors rather than the continued liquidation; and
- Secured Creditor(s) of the company, in the event of a breach of the terms of the security agreement by the company.

What happens at the first and second meeting of creditors?

The Voluntary Administrator convenes two meetings of creditors of the company.

The first meeting is held within 8 business days of the appointment and the second meeting is usually held within 20–30 business days after the appointment.

At the first meeting of creditors, creditors consider the following as required by the Corporations Act 2001 ("the Act"):

- Whether to replacing the Administrator with another Administrator; and
- Whether to form a committee to advise and assist the Administrator.



Before convening the second meeting of creditors, the Administrator is required to issue a report to creditors detailing the results of their investigations and provide an opinion on the following three courses of action available to creditors of the company when deciding the course of action for the company which best suits creditors' interests:

- That the Administration end and the control of the company revert back to director(s);
- That the company execute a DOCA as proposed by the director(s); or
- That the company be placed into liquidation.

The second meeting may be adjourned by creditors for up to forty-five (45) business days for further investigations to be carried out or for a proposed DOCA to be amended. The Court has the power to extend this period if there is a genuine reason for an extension.

What is the impact of Voluntary Administration on secured and unsecured creditors?

Secured creditor(s) have thirteen (13) business days from the appointment date of the Voluntary Administrator to exercise their security i.e. appoint a Receiver and Manager. Failing to exercise their security within the specified time binds the secured creditor to a moratorium for the duration of the Voluntary Administration period and no enforcement action can be taken by the secured creditor(s).

Unsecured creditor(s) are bound by a moratorium from the moment a Voluntary Administrator is appointed and cannot take any enforcement action or apply to wind up the company. A provisional liquidator can only be appointed by the leave of the court and all current proceedings or enforcement actions against the company are put on hold.

What is the impact of Voluntary Administration on owners of property?

Section 440B of the Act imposes restrictions on:

- An owner of property used by the company from taking possession of, or recovering the property;
- A lessor from levying distress rent, taking possession, or otherwise recovering the property; and
- A secured party from selling the property or otherwise enforcing the security interest.

The Voluntary Administrator may still sell or dispose of assets:

- With the consent of the secured party;
- With the consent of the Court; and
- In the ordinary course of business.

Any disposal made by the Voluntary Administrator requires the sale proceeds from the secured property to be distributed to those holding relevant security interests.



What is the impact of Voluntary Administration on landlords?

Unless landlords have commenced enforcement action prior to the appointment of the Voluntary Administrator, landlords are bound by the same moratorium applying to all other creditors.

Pursuant to Section 443B of the Act, the Voluntary Administrator can occupy the company's leased premises for up to five (5) business days without paying rent but must pay rent for the remainder of the Voluntary Administration period.

The Voluntary Administrator's liability to the landlord ends at the conclusion of the Voluntary Administration or when the premises are vacated. The Voluntary Administrator will not be liable for rent if the Voluntary Administrator does not have possession of the property. However, the company will continue to incur liability for the rent.

What is the impact of Voluntary Administration on guarantees?

Creditors holding third-party guarantees from director(s) are bound by the moratorium during the period of the Voluntary Administration. After the Voluntary Administration ends, guarantees can then be enforced.

When does a Voluntary Administration end?

The Voluntary Administration ends when:

- A DOCA is fully executed; or
- The creditors resolve to wind up a company; or
- The creditors resolve that the Voluntary Administration should end; or
- The Court orders the end of the Voluntary Administration; or
- The approved DOCA is not signed within 15 business days of the second meeting of creditors; or
- The period for calling the second meeting ends without the meeting being called; or
- The Court appoints a liquidator to the company.

Should you have any queries regarding the above information or any other matters, please do not hesitate to contact our team via hamiltonmurphy.com.au or send us an email at info@hamiltonmurphy.com.au.

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